IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.205 OF 2003

M/s Shree Sai Enterprises ... Petitioners

v/s

Mahanagar Telephone Nigam Ltd.

Vashi, Navi Mumbai and anr. ... Respondents

Mr K.M. Jawale i/b Mr M.S. Patankar for Petitioners.

Ms S.I. Shah for Respondents.

CORAM : D.K.DESHMUKH J.

DATE : 20TH JANUARY 2005

P.C.: -

1. By this petition, the petitioners challenge the award made by the Sole Arbitrator dated 24th September 2000. Before me, challenge is restricted to two items viz. (1) award of Rs.10,314 to the respondents against counter claim made by the respondents and (2) rejection of the claim of the petitioners for compensation at 3 % of the cost on account of idle overheads. So far as the first item is concerned, it is submitted that the award of Rs.10,314/- to the respondents is to compensate the respondents for carrying out 2 % work which was left incomplete by the petitioners. It is submitted that the respondents would become entitled to compensation in this regard only if the respondents establish that the respondents had validly rescinded the contract and had completed the work left incomplete by the petitioners at the risk and cost of the petitioners. It is pointed out that the Arbitrator himself has recorded a finding that the respondents were not justified in rescinding the contract. In the face of this finding, there can be no award made in favour of the respondents to compensate the respondents for completing the incomplete work.

2. So far as the second item is concerned, it is submitted that though the tenders were accepted in October 1996 and the work was to be completed within five months, the work order itself was not given till 2nd February 1997. In this regard, the Arbitrator himself has recorded a finding that till February 1997, the work order was not given. It is submitted that it was the case for the petitioners that due to the conduct of the respondents, carrying out of the work was spread-over over a period of three years though actually work was to be carried out within five months. It is submitted that the Arbitrator once having accepted that the petitioners carried out the work within five months, time could not have been declined to make an award in favour of the petitioners for compensation for idle machinery. The Arbitrator has not recorded any reason for rejecting the claim of the petitioners.

3. So far as the first item is concerned, the learned counsel appearing for respondents did not dispute that the Arbitrator has not recorded any reasons for awarding this claim in favour of the respondents. So far as the second item is concerned, it is submitted by her that the very fact that the work was spread-over over a period of three years shows that it is the petitioners who are responsible for delay and not the respondents. In the light of rival submissions, I have

perused the record. It is clear from the award that the award of Rs.10,314/- in favour of the respondents is without any reasons and in fact, contrary to the finding recorded by the Arbitrator that recession of contract by the respondents was improper. Therefore, that part of the award has to be set aside. It is accordingly so ordered. So far as the second item is concerned, the Arbitrator himself has made following observations :-

> "These details support the submission of the Claimants that actual work was done in about 5 months' time spread-over 3 years."

. The petitioners have produced voluminous evidence showing various incidents of inaction and in fact, callous behaviour on the part of the respondents because of which the work was completed in parts over a period of three years. The Arbitrator, however, has not given any reason why despite his finding that the petitioners took only five months' time to complete the work, denies to the petitioners compensation for the machinery and other things remaining idle for such a long time. In my opinion, rejection of the petitioners' claim in this regard is without any reason. That part of the award is also liable to be set aside. It is accordingly so ordered.

4. In the result, petition succeeds in part, the award impugned in the petition to the extent of awarding Rs.10,314/- in favour of the respondents and rejecting the claim of the petitioners for compensation at the rate of 3 % of the cost on account of idle machinery etc. is set aside. The award is modified to the extent above. Petition is disposed off. The respondents are directed to pay cost of this petition to the petitioners as incurred by the petitioners.

. Parties to act on the copy of this order duly authenticated by the Company Registrar / Personal Secretary as true copy.

. Certified copy expedited.